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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

Case No. BK-N-11-50084-BTB

ELKO GOLD MINE, LLC,

Chapter 11

Debtor.

**TEAM GREEN INC.'S MOTION TO
ESTIMATE CLAIM FOR PURPOSES OF
VOTING ON AND CONSIDERATION OF
OBJECTION TO CONFIRMATION OF
DEBTOR'S SECOND AMENDED
CHAPTER 11 PLAN OF
REORGANIZATION**

Hearing Date: OST Pending
Hearing Time: OST Pending

Team Green, Inc. ("TGI"), by and through counsel, Gregory D. Corn, Chartered and Law Offices of Amy N. Tirre, A Professional Corporation, hereby moves pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 3018(a) for an order estimating its claim for purposes of voting on and objecting to Elko Gold Mine LLC's ("Debtor") Second Amended Plan of Reorganization and in support respectively states:

1. On January 10, 2011, Debtor Elko Gold Mine, LLC filed its voluntary petition for

relief under Chapter 11 of Title 11 of the United States Code.

2. The bar date for timely filing proofs of claim was May 16, 2011.

3. Debtor's originally-filed Schedule F identified TGI as an unsecured creditor with a claim in the amount of \$101,956.02. The Debtor did not indicate the debt was disputed, contingent or unliquidated. See Docket No. 1 filed on January 10, 2011.

4. Under FRBP 3003, creditors are not required to file a proof of claim in a Chapter 11 case if the schedule of liabilities identifies the claim unless it is scheduled as disputed, contingent or unliquidated. Otherwise, the schedules constitute prima facie evidence of the validity and amount of the claim.

5. Debtor filed Amended Schedules on April 11, 2011 as Docket No. 83.

6. In Debtor's Amended Schedule F, Debtor marked TGI's claim as disputed.

7. Pursuant to FRBP 1009(a), an amendment to the schedules must be served upon all parties affected by the amendment.

8. A review of the docket reveals no proof of service of the Amended Schedules upon either TGI or its counsel, Gregory D. Corn, Esq. Based upon undersigned counsel's information and belief, neither TGI nor its counsel, Mr. Corn, were served with the Amended Schedule F and Mr. Corn was unaware of the change in status of TGI's claim until this week.

9. Concurrent with the filing of this motion, TGI is filing its proof of claim in the amount of \$105,071.33.

10. Because Debtor has categorized TGI's claim as disputed and TGI was unaware of this change to the status of its claim, TGI's vote on Debtor's plan will not be counted unless this court estimates its claim for voting purposes pursuant to FRBP 3018. See FRBP 3003(c)(2). "A claimant whose claim has been objected to has an affirmative duty to request the claim's estimation if the claim holder wishes to vote on the plan." See *In re M. Long Arabians*, 103 B.R.

1 211, 215 (9th Cir. BAP 1989).

2 Based upon the foregoing, TGI respectfully requests the Court to estimate its claim in the
3 amount of \$105,071.33 for voting purposes so that its claim will be considered with respect to
4 confirmation of Debtor's Second Amended Plan and so that TGI's objection to Debtor's Second
5 Amended Plan will also be considered by this court.

6 DATED this October 13, 2011.

7 GREGORY D. CORN, CHARTERED

8 and

9 LAW OFFICES OF AMY N. TIRRE, APC

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11 By: /s/ Amy N. Tirre
12 AMY N. TIRRE, ESQ.

13 *Counsel for Team Green, Inc.*
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CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of Law Offices of Amy N. Tirre, that I am over the age of 18 and not a party to the above-referenced case, and that on October 13, 2011 I filed the **TEAM GREEN INC.'S MOTION TO ESTIMATE CLAIMS FOR PURPOSES OF VOTING ON AND CONSIDERATION OF OBJECTIONS TO CONFIRMATION OF DEBTOR'S SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION** as indicated:

 X **BY NOTICE OF ELECTRONIC FILING:** through Electronic Case Filing System of the United States Bankruptcy Court, District of Nevada, to the individuals and/or entities at their email addresses as set forth below:

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 BY HAND DELIVERY VIA COURIER: by causing hand delivery of the Document listed above via Reno Carson Messenger Service to the persons at the addresses set forth below.

 BY MAIL: by placing the document listed above in a sealed envelope with Postage thereon fully prepaid in the United States Mail at Reno, Nevada, and addressed as set forth below. I am readily familiar with my office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on 13 October 2011, with postage thereon fully prepaid in the ordinary course of business.

DATED this October 13, 2011.

 /s/ Andrea Black

An Employee of Law Offices of Amy N. Tirre, APC